

★ SEP 28 2006 ★

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

-----X  
In re: ZYPREXA  
PRODUCTS LIABILITY LITIGATION

MEMORANDUM & ORDER

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THIS DOCUMENT RELATES TO:

04-MD-1596 (JBW)

ALL ACTIONS

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APPEARANCES:

For the Plaintiffs:

SEEGER WEISS, LLP  
One William Street  
New York, New York 10004  
BY: CHRISTOPHER A. SEEGER  
DONALD A. ECKLUND

MILBERG WEISS  
One Penn Plaza  
New York, New York 10119  
BY: MELVYN I. WEISS

DOUGLAS & LONDON  
111 John Street  
New York, New York 10038  
BY: MICHAEL A. LONDON

THE GARRETSON LAW FIRM  
9545 Kenwood Road  
Cincinnati, Ohio 45242  
BY: MATT L. GARRETSON

HERSH & HERSH  
2080 Opera Plaza  
601 Van Ness Avenue  
San Francisco, Ca. 94102  
BY: NANCY HERSH

RICHARDSON, PATRICK WESTBROOK

*Handwritten signature*

& BRICKMAN, LLC  
1037 Chuck Dawley Blvd  
Post Office Box 1007  
Mt. Pleasant, South Carolina 29464  
BY: H. BLAIR HAHN  
THOMAS D. ROGERS

LAINER LAW FIRM, PLLC  
126 East 56th Street, 6th Floor  
New York, New York 10022  
BY: RICHARD D. MEADOW

ABRAHAM, WATKINS, NICHOLS, SORRELS,  
MATTHEWS & FRIEND  
800 Commerce Street  
Houston, Texas 77002  
BY: DAVID P. MATTHEWS

HENINGER GARRISON DAVIS LLC  
2224 1st Avenue North  
Birmingham, Alabama 35203  
BY: LEW GARRISON

BURG SIMPSON ELDREDGE HERSH JARDINE, PC  
40 Inverness Drive East  
Englewood, Colorado 80112  
BY: SETH A. KATZ  
MICHAEL BURG

FIBICH, HAMPTON & LEEBRON, LLP  
Five Houston Center  
1401 McKinney Street, Suite 1800  
Houston, Texas 77010  
BY: TOMMY FIBICH

REICH & BINSTOCK  
4266 San Felipe Suite 1000  
Houston, Texas 77027  
BY: DEBORAH LEPOW ZIEGLER

PARKER & WAICHMAN  
111 Great Neck Road  
Great Neck, New York 11021  
BY: JASON MARK  
JERROLD S. PARKER

HERBERT L. WAICHMAN

ALEXANDER HAWES, & AUDET, LLP  
221 Main Street  
Suite 1460  
San Francisco, California 94105  
BY: WILLIAM M. AUDET

HAGENS BERMAN SOBOL SHAPIRO LLP  
One Main Street  
Cambridge, Massachusetts 02142  
BY: THOMAS M. SOBOL

SIMMONS COOPER LLC  
707 Berkshire  
East Alton, Illinois 62024  
BY: ERIC TERRY  
TOR A. HOERMAN

MILLER & ASSOCIATES  
105 North Alfred Street  
Alexandria, Virginia 22314  
BY: MICHAEL MILLER  
CHRISTOPHER IDE

LEVIN, PAPANTONIO  
316 South Baylen Street Suite 600  
Pensacola, Florida 32502  
BY: KIMBERLEY LAMBERT  
TROY RAFFERTY

THE BEASLEY FIRM  
The Beasley Building  
1125 Walnut Street  
Philadelphia, Pennsylvania 19107  
BY: NANCY G. RHOADS

WEITZ & LUXENBERG  
180 Maiden Lane  
New York, New York 10038  
BY: DAVID L. ROSEN BAND  
PERRY WEITZ

WHATLEY DRAKE & KALLAS, LLC  
2323 2nd Avenue North

Birmingham, Alabama 35203  
BY: W. TODD HARVEY

BAILEY PERRIN BAILEY LLP  
440 Louisiana Street Suite 2100  
Houston, Texas 77002  
BY: MICHAEL W. PERRIN

HOLLIS & WRIGHT, PC  
1750 Financial Center  
505 North 20th Street  
Birmingham, Alabama 35203  
BY: KATHRYN S. HARRINGTON

HANLY CONROY BIERSTEIN SHERIDAN  
FISHER & HAYES, LLP  
112 Madison Avenue  
New York, New York 10016  
BY: JAYNE CONROY

ASHCRAFT & GEREL  
2000 L Street NW Suite 400  
Washington, D.C. 20036  
BY: MICHAEL HEAVISIDE

ROBINSON, CALCAGNIE & ROBINSON  
620 Newport Center Drive 7th Floor  
Newport Beach, California 92660  
BY: MARK ROBINSON

LOPEZ, HODES, RESTAINO, MILMAN  
& SIKOS  
450 Newport Center Drive 2nd Floor  
Newport Beach, California 92660  
BY: RAMON ROSSI LOPEZ

For the Defendant:

PEPPER HAMILTON, LLP  
3000 Two Logan Square  
Eighteenth & Arch Sts.  
Philadelphia, Pennsylvania 19103  
BY: ANDREW R. ROGOFF  
GEORGE A. LEHNER  
NINA GUSSACK

MCCARTER & ENGLISH  
245 Park Avenue  
New York, New York 10167  
BY: SAMUEL J. ABATE, JR

For the Federal Government: OFFICE OF THE UNITED STATES  
ATTORNEY  
Eastern District of New York  
BY: MICHAEL GOLDBERGER

CENTERS FOR MEDICARE AND  
MEDICAID SERVICES  
BY: BARBARA WRIGHT

For the States: STATE OF ALASKA  
BY: JEFF STONE

ARKANSAS DEPARTMENT OF HEALTH  
AND HUMAN SERVICES  
P.O. Box 1437  
Little Rock, Arkansas 72203  
BY: RICHARD DAHLGREN

CALIFORNIA DEPARTMENT OF HEALTH  
SERVICES  
BY: DIANA GHILARDUCCI  
DAVID R. MILLER

STATE OF CALIFORNIA DEPARTMENT  
OF JUSTICE  
Office of the Attorney General  
Bureau of Medi-Cal Fraud & Elder Abuse  
110 West "A" Street Suite 1100  
San Diego, California 92101  
BY: ELISEO SISNEROS  
BRIAN V. FRANKEL

STATE OF CONNECTICUT  
BY: ROBERT B. TEITELMAN

DISTRICT OF COLUMBIA MEDICAID

FRAUD CONTROL UNIT  
BY: JANE DRUMMEY  
JOEL ARMSTRONG

OFFICE OF THE FLORIDA ATTORNEY  
GENERAL  
Medicaid Fraud Control Unit  
Plaza Level-01, The Capitol  
Tallahassee, Florida 32399-1050  
BY: MARK S. THOMAS

STATE OF INDIANA ATTORNEY GENERAL  
Medicaid Fraud Control Unit  
Indiana Government Center South, Fifth Floor  
302 West Washington Street  
Indianapolis, Indiana 46204  
BY: EDWARD A. MILLER  
DANIEL MILLER

KANSAS HEALTH POLICY AUTHORITY  
Landon State Office Building, Room 900-N  
900 SW Jackson  
Topeka, Kansas 66612-1220  
BY: ROBERT R. HILLER, JR.

OFFICE OF THE KENTUCKY ATTORNEY  
GENERAL  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601-8204  
BY: C. DAVID JOHNSTONE

LOUISIANA DEPARTMENT OF HEALTH  
AND HOSPITALS  
Bureau of Legal Services  
BY: LAVON RAYMOND-JOHNSON  
WELDON HILL II

MARYLAND DEPARTMENT OF HEALTH  
AND MENTAL HYGIENE  
300 W. Preston Street, Suite 302  
Baltimore, Maryland 21201  
BY: LORIE MAYORGA

OFFICE OF THE ATTORNEY GENERAL  
OF MICHIGAN

P.O. Box 30758  
Lansing, Michigan 48909  
BY: BILL MORRIS

OFFICE OF THE MISSISSIPPI ATTORNEY  
GENERAL  
Counsel for the Division of Medicaid  
Robert E. Lee Building, Suite 801  
239 North Lamar Street  
Jackson, Mississippi 39201-1399  
BY: CHUCK QUARTERMAN

NEW YORK STATE DEPARTMENT OF  
HEALTH  
Bureau of Medicaid Law  
Nelson A. Rockefeller Empire State Plaza  
Albany, New York 12237  
BY: GREGOR N. MACMILLAN

NEW YORK STATE OFFICE OF THE  
ATTORNEY GENERAL  
120 Broadway  
New York, New York 10271  
BY: MARIE SPENCER

STATE OF NORTH CAROLINA  
Department of Health and Human Services  
Division of Medical Assistance  
P.O. Box 629  
Raleigh, North Carolina 27602  
BY: SUSANNAH P. HOLLOWAY

OHIO ATTORNEY GENERAL  
Health Care Fraud Section  
150 East Gay Street 17th Floor  
Columbus, Ohio 43215  
BY: DREW DUFFY

OHIO DEPARTMENT OF JOBS AND  
FAMILY SERVICES  
BY: JULIANE BARONE  
KATHERINE BENEDICT

OREGON DEPARTMENT OF JUSTICE  
BY: MARILYN K. ODELL

PUBLIC CONSULTING GROUP  
BY: KATHERINE BENEDICT

SOUTH CAROLINA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES  
BY: GEORGE BURNETT

TENNESSEE ATTORNEY GENERAL'S  
OFFICE  
P.O. Box 20207  
Nashville, Tennessee 37202  
BY: MICHAEL K. BASSHAM  
PETER COUGHLAN

COMMONWEALTH OF VIRGINIA OFFICE  
OF THE ATTORNEY GENERAL  
Medicaid Fraud Control Unit  
900 East Main Street  
Richmond, Virginia 23219  
BY: ERICA JOANNA BAILEY  
TRACEY STITH  
ANGELA BENJAMIN-DANIELS

WISCONSIN DEPARTMENT OF JUSTICE  
P.O. Box 7857  
Madison, Wisconsin 53707-7857  
BY: RICHARD A. VICTOR

For the Special Masters: KENNETH R. FEINBERG  
The Feinberg Group  
The Willard Office Building  
1455 Pennsylvania Avenue, NW  
Suite 390  
Washington, DC 20004-1008

Jack B. Weinstein, Senior United States District Judge:

A "request for clarification of the court's rulings by the State of Connecticut, as amicus curiae," dated September 21, 2006, has been received. Connecticut asks this court to clarify its



rulings, see *In re Zyprexa Prods. Liab. Litig.*, 2006 WL 2590402 (E.D.N.Y. 2006), as they apply to the state's outstanding Medicaid liens on the recoveries of plaintiffs.

The relevant portion of the Connecticut statute applicable to this question reads as follows:

In the case of causes of action of beneficiaries of aid under the state...medical assistance program...the claim of the state shall be a lien against the proceeds therefrom in the amount of the assistance paid or fifty per cent of the proceeds received by such beneficiary or such parent after payment of all expenses connected with the cause of action, whichever is less.

Conn. Gen. Stat. § 17B-94. This statute places a cap of 50% of the plaintiff's recovery on the amount that state can receive under its Medicaid liens.

Connecticut proposes that the court's instruction that the states "shall pay a share of the fees and costs for all plaintiffs from whom they recover Medicaid reimbursements...proportionate to the state's share of the gross recovery compared to the plaintiff's share," *id.* at 46, would result in the following hypothetical breakdown of a \$10,000 settlement amount:

Breakdown of \$10,000 Settlement Under Connecticut Law  
(State's recovery limited by state statute to 50% of plaintiff's net recovery)

		<u>Plaintiff</u>	<u>State</u>
Total settlement	\$10,000	\$5,000	\$5,000
Attorneys' fees*	(\$3,500)	(\$1,750)	(\$1,750)
Costs*	(\$100)	(\$50)	(\$50)
<b>Net proceeds</b>	<b>\$6,400</b>	<b>\$3,200</b>	<b>\$3,200</b>

Plaintiff payment	50%	\$3,200
State holdback	50%	\$3,200

\* assumes attorneys' fees of 35% and costs of 1% per court orders

*Letter of Connecticut dated September 21, 2006, p. 4.*

This analysis is correct on the assumption that Medicaid in Connecticut paid \$5,000 or more for treatment of the claimant as a result of the claimant's use of Zyprexa. It would also apply to any settlement where Connecticut's Medicaid paid an amount equaling 50% or more of the settlement. This may well be true of all, or nearly all, of the cases.

In those, perhaps few, cases where Connecticut paid less than 50% of the total settlement amount towards the claimant's treatment, a two-step process is required. First is the calculation of the "holdback" for lien purposes. The holdback amount is a cap on the state's recovery; it represents the maximum the state could receive. The above calculation method for the holdback amount in the Connecticut hypothetical is correct, but represents only the first step, before computation of the actual amount paid by, and to, Connecticut.

The second step is needed in order to determine the amount Connecticut will actually receive from the settlement. The state must first show how much it actually paid in Medicaid costs for the plaintiff. Connecticut has chosen to calculate that amount "using a 'traditional' case-by-case approach to lien resolution." *In re Zyprexa Prods. Liab. Litig*, 2006 WL at \*13.

Continuing with the above hypothetical of a \$10,000 settlement, we assume that the state had paid only \$1,000 of plaintiff's medical costs, rather than \$5,000 or more. Where the total settlement is \$10,000; the outlay by the state is \$1,000; and the holdback amount for the state is \$3,200, the calculation of ultimate distribution would be:

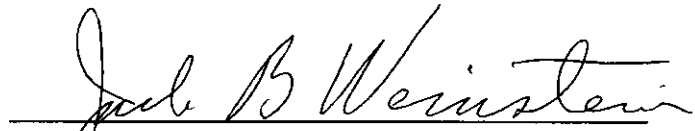
		<u>Plaintiff</u>	<u>State</u>
Attorneys' fees	35%	(\$3,150)	(\$350)
Attorneys' costs	1%	(\$90)	(\$10)
<b>Net proceeds</b>		<b>\$5,760</b>	<b>\$640</b>

**Total Disbursed**

**\$10,000**

If Connecticut or any affected person wishes to object to this opinion, a formal motion should be made, accompanied by briefs. An oral hearing will be scheduled promptly at which attendance by telephone may be arranged.

SO ORDERED.

  
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Jack B. Weinstein  
Senior United States District Judge

Brooklyn, N.Y.  
September 28, 2006